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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/812,230

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Rick A. Aberle

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EXAMINER

BECKER, DREW E

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/812,230	Applicant(s) ABERLE ET AL.	
	Examiner Drew E. Becker	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-37 of copending Application No. 10/812,325 in view of Tomey et al [Pat. No. 7,169,421]. It would have been obvious to one of ordinary skill in the art to link the waste blending device and analyzer of claims 28-30 to the controller of parent claim 16 in '325 since the controller of claim 16 already was linked to analyzers and the apparatus for delivering material, and since controllers were commonly used to control analyzers and blenders in meat processing as shown by Tomey et al (Figure 6).

This is a provisional obviousness-type double patenting rejection.

Art Unit: 1761

3. Claims 1-16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 10/812,231 in view of Neiberger [Pat. No. 5,026,572]. It would have been obvious to one of ordinary skill in the art to use waste material and feed the analyzed material to an extruder in the method of claim 12 of '231 in view of Neiberger since Neiberger teaches that blended meat products were commonly fed to extruders and that wet beef waste was a commonly utilized source of protein and water in the meat blending art (column 2, line 67; column 3, line 32; column 3, line 36; column 3, line 50)

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 recites "A method managing waste and/or animal protein-containing streams" and "providing an incoming waste stream". It is not clear whether the claim includes animal protein containing streams, or simply waste streams.

7. Claim 1 recites "A method of managing... streams in extrusion processing" and "directing said adjusted output stream to an extruder for extrusion processing thereof". It

Art Unit: 1761

is not clear whether extrusion is required since it is not positively recited as a method step in the claim.

8. Claim 1 recites the limitation "said blended material". There is insufficient antecedent basis for this limitation in the claim.

9. Claim 1 recites the limitation "said adjusted output stream". There is insufficient antecedent basis for this limitation in the claim.

10. Claim 2 recites the limitation "said adjusting step". There is insufficient antecedent basis for this limitation in the claim.

11. Claim 2 recites the limitation "said analyzed stream". There is insufficient antecedent basis for this limitation in the claim.

12. Claim 3 recites the limitation "said adjusting step". There is insufficient antecedent basis for this limitation in the claim.

13. Claim 5 recites "said stream". It is not clear which stream is being referred to.

14. Claim 9 recites "said stream". It is not clear which stream is being referred to.

15. Claim 9 recites the limitation "said analysis step". There is insufficient antecedent basis for this limitation in the claim.

16. Claim 9 recites "said analysis step including the steps of analyzing the stream to determine at least one characteristic of the stream selected from the group consisting of...". This list of characteristics does not include the previously claimed "moisture content". It is not clear whether these characteristics are in addition to the moisture content, or whether the moisture content is not required.

17. Claim 10 recites "the stream". It is not clear which stream is being referred to.

Art Unit: 1761

18. Claim 12 recites the limitation "said emulsified material". There is insufficient antecedent basis for this limitation in the claim.
19. Claim 13 recites the limitation "said adjusted output stream". There is insufficient antecedent basis for this limitation in the claim.
20. Claim 14 recites "said other additives selected from the group of fat, tallow, water, and steam". It is not clear whether other additives can be used since the claim does not include the term "consisting".
21. Claim 15 recites the limitation "said blended stream". There is insufficient antecedent basis for this limitation in the claim.
22. Claim 15 recites the limitation "said analysis step". There is insufficient antecedent basis for this limitation in the claim.
23. Claim 16 recites the limitation "said emulsification". There is insufficient antecedent basis for this limitation in the claim.
24. Claim 16 recites "the stream". It is not clear which stream is being referred to.

Claim Rejections - 35 USC § 103

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claims 1 and 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neiberger [Pat. No. 5,026,572] in view of Tomey et al [Pat. No. 7,169,421].

Art Unit: 1761

Neiberger teaches an extrusion process performed by providing a stream of wet beef waste, flour, preservatives and salt (column 2, line 67), blending the mixture in a batch blender (column 3, line 32), directing the mixture to an continuous extruder (column 3, line 36), and adding more wet beef waste to the extruder (column 3, line 50). Neiberger does not recite analyzing the mixture to determine at least the moisture content, creating an output stream from the analyzer, adjusting the output stream by addition of waste, fat protein, starch, or water, analyzing a second characteristic such as fat and protein content, and using microwave or infrared analyzers. Tomey et al teach a method for combining meat products by analyzing meat blends (Figure 6, #102, 104), determining the moisture, protein, and fat content (column 5, line 30), adjusting the output stream by addition of ingredients such as meat blend and water (column 5, line 34), and using microwave or infrared analyzers (column 5, lines 36-46). It would have been obvious to one of ordinary skill in the art to incorporate the analyzing of Tomey et al into the invention of Neiberger since both are directed to methods of processing meat products, since Neiberger already included blending and extrusion of multiple ingredients, and since the analyzing of Tomey et al provided more accurate and precise control of ingredients.

27. Claims 2-3, 5-6, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neiberger, in view of Tomey et al, as applied above, and further in view of Huber et al [Pat. No. 6,648,501].

Neiberger and Tomey et al teach the above mentioned concepts. Neiberger and Tomey et al do not recite recirculating a portion of the analyzed stream back to the blender,

Art Unit: 1761

reducing the particle size before the blender, and adding carbon dioxide to the blender. Huber et al teach a method for mixing meat by analyzing a meat blend (Figure 1, #38), recirculating meat back to a blender (Figure 1, #39a), reducing the particle size by grinding the meat (Figure 1, #33), and adding carbon dioxide (column 6, line 21). It would have been obvious to one of ordinary skill in the art to incorporate the improvements of Huber et al into the invention of Neiberger, in view of Tomey et al, since all are directed to methods of processing meat products, since Neiberger already included the addition of further meat (column 3, line 50), since grinding the meat would result in more uniform heating due to the uniform particle size, and since the carbon dioxide injection of Tomey et al reduced the harmful oxidation effects to the meat.

28. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neiberger, in view of Tomey et al and Huber et al, as applied above, and further in view of Groves et al [Pat. No. 4,171,164].

Neiberger, Tomey et al, and Huber et al teach the above mentioned concepts.

Neiberger, Tomey et al, and Huber et al do not recite a microprocessor connected to the analyzer. Groves et al teach a method for blending meat by providing a fat analyzer and controlled by a microprocessor (Figure 1, #12 & 14). It would have been obvious to one of ordinary skill in the art to incorporate the microprocessor of Groves et al into the invention of Neiberger, in view of Tomey et al and Huber et al, since all are directed to methods of processing meat, since Tomey et al already included analyzers but simply did not specify how they were controlled, and since microprocessors were commonly used to control meat analyzers as shown by Groves et al.

Art Unit: 1761

29. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neiberger, in view of Tomey et al and Huber et al, as applied above, and further in view of Gibson [Pat. No. 4,820,535].

Neiberger, Tomey et al, and Huber et al teach the above mentioned concepts.

Neiberger, Tomey et al, and Huber et al do not recite emulsifying to a size of 7mm or less. Gibson teaches a method of emulsifying meat by comminuting it to a size of 5mm (column 2, line 21). It would have been obvious to one of ordinary skill in the art to incorporate the emulsifying of Gibson into the invention of Neiberger, in view of Tomey et al and Huber et al, since all are directed to methods of processing meat, since Huber et al already included grinding; since the emulsifying of Gibson rendered the sinews in the meat organoleptically undetectable while preserving its fibrous character (abstract), and since the emulsifying of Gibson would also provide a more uniform product and thus provide easier analysis.

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McFarland [Pat. No. 3,825,231], Kopp et al [Pat. No. 5,470,595], Steinberg et al [Pat. No. 4,450,183], Bernard [Pat. No. 4,124,339], Orth Jr [Pat. No. 4,206,236], Sprinkle [US 206/0028910], Sandor [Pat. No. 3,705,695], Ducharme [Pat. No. 4,910,038], Wiedmann [Pat. No. 4,786,514], LaBudde [Pat. No. 5,247,460], Ducharme [Pat. No. 5,045,339], Wilkins et al [Pat. No. 6,180,335], Buckholz Jr et al [Pat. No. 4,514,094], Purser [Pat. No. 5,945,152], Henry et al [Pat. No. 3,966,973], and Bebiak et al [Pat. No. 6,358,546] teach methods of processing meat and other foods.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


DREW BECKER
PRIMARY EXAMINER

6/26/07